

2002 WL 34160014 (La.Dist.Ct.) (Trial Pleading)  
District Court of Louisiana,  
22nd Judicial District Court.

Edward J. CLOOS, III Individually and on Behalf of Other Persons Similarly Situated,

v.

12/21, L.L.C., Stirling 21, L.L.C., and James Maurin.

No. 2002-15733.  
November 18, 2002.

Division "T"

**Petition for Damages and for Certification as a Class Action**

Respectfully submitted, [Edward J. Cloos, III](#), Attorney at Law, 411 N. Theard Street, Covington, LA 70433, (985) 867-9684, Bar Roll #: 1303.

The petition of Edward J. Cloos, III, a person of the full age domiciled in St. Tammany Parish individually and on behalf of other similarly situated persons respectfully represents:

**I.**

Made Defendants herein are:

A. 12/21, L.L.C., upon information and belief a Louisiana limited liability corporation.

B. Stirling 21, L.L.C., upon information and belief a Louisiana limited liability corporation.

C. James Maurin, a person of the full age domiciled in St. Tammany Parish.

Defendant are liable unto Petitioners in the following particulars to wit:

**II.**

Tchefuncta Club Estates, Inc. is a Louisiana corporation existing for the purpose of governing and operating Tchefuncta Club Estates, a residential community existing in St. Tammany Parish for more than forty years.

**III.**

Petitioner is the owner of a house and lot in Tchefuncta Club Estates. The owners of lots in Tchefuncta Club Estates are voting stock holders in Tchefuncta Club Estates, Inc. Upon information and belief, there are in excess of three hundred stock holders in Tchefuncta Club Estates, Inc. who are similarly situated to Petitioner.

**IV.**

This is an action for damages based upon the conduct of Defendants which has caused, and will cause, harm to Petitioner and others similarly situated.

**V.**

This matter is appropriate for class certification due to the number of potential Plaintiffs and the common source of damage or harm to the Plaintiffs.

**VI.**

This matter involves Defendants attempts to infringe upon fundamental rights of Plaintiff and other similarly situated persons through the use of threats, intimidation, and other tactics including abuse of legal process.

**VII.**

The right of citizens to petition their government for redress of grievances is a fundamental constitutional right. One of the principal goals of the American Revolution was to establish a nation in which the right to free and open petition for redress was sacred and inviolate.

**VIII.**

Throughout the United States, real estate developers in recent years have sought to thwart the rights of citizens to use legitimate means of seeking redress with respect to proposed real estate developments by threatening to sue, and actually suing, private citizens and groups or associations of citizens who actually or potentially seek to modify, limit, or prevent development projects.

**IX.**

Upon information and belief, the suits seldom have arguable or actual legal merit but are intended instead to deny, through the use of threats, intimidation, and other like tactics, the exercise of sacred constitutional rights including the right to free speech and the right to petition for redress.

**X.**

On or about October 28, 2002 the Defendants 12/21, L.L.C. and Stirling 21, L.L.C. filed suit against Tchefuncta Club Estates, Inc. in the 22nd Judicial District Court alleging a claim for damages based upon Tchefuncta Club Estates, Inc.'s efforts to contest the propriety of governmental action taken in the approval process for a real estate project which the Defendants desire to develop.

**XI.**

The Petitioners in the aforementioned suit alleged an interest in property located near Tchefuncta Club Estates, Inc. This interest consists, according to the suit, of ownership of a small portion of the property and options to purchase the remainder of the property.

**XII.**

The actions of the Defendants with respect to Petitioner and the other stockholders of Tchefuncta Club Estates, Inc. as set forth herein constitute the commission of the Louisiana torts of Abuse of Rights and Intentional Infliction of Emotional Distress.

**XIII.**

Defendants conduct as set forth herein has been improper, malicious, and intentionally calculated to cause harm to Petitioner and other similarly situated persons.

**XIV.**

The lawsuit filed by 12/21, L.L.C. and Stirling 21, L.L.C. was filed by an attorney who is, upon information and belief, a stockholder in Tchefuncta Club Estates, Inc. This attorney has, upon information and belief, previously served in a representative capacity for Tchefuncta Club Estates, Inc. in negotiations with the aforesaid Defendants. Based on the foregoing, the use of this attorney in an adverse relationship to Tchefuncta Club Estates, Inc. is clearly improper.

**XV.**

In correspondence dated November 11, 2002, the Defendant, James Maurin directed a letter, a copy of which is attached hereto as an exhibit, to all stockholders of Tchefuncta Club Estates, Inc.

**XVI.**

This letter represents an unethical and improper attempt to circumvent rules prohibiting direct contact with, or solicitation of, represented persons having adverse interests in litigation.

**XVII.**

The lawsuit filed by 12/21, L.L.C. and Stirling 21, L.L.C. against Tchefuncta Club Estates, Inc. alleges, in essence, malicious prosecution by Tchefuncta Club Estates, Inc. of a lawsuit concerning the real estate development project which Defendants wish to undertake. That lawsuit is presently pending and has been pending for a period of time approaching one year.

**XVIII.**

A necessary condition for a cause of action for malicious prosecution is the termination of the underlying action in a manner favorable to the party asserting the malicious prosecution claim.

**XIX.**

In order to assert a valid claim for damages, a party must have sustained compensable harm.

**XX.**

The statement of James Maurin the letter of November 11, 2002 to the effect that "Our development group has been forced to file a lawsuit against TCE seeking damages that will result from an unfounded lawsuit filed by TCE against St. Tammany Parish nearly one year ago." amounts to an admission against interest that Defendants' harm is prospective and has not occurred.

**XXI.**

By knowingly and willfully filing and pursuing a legal action for malicious prosecution of a lawsuit which has not yet been dismissed seeking damages which have not yet been sustained, for the purpose of thwarting the exercise of sacred constitutional rights of citizens, Defendants have committed the tort of Abuse of Rights.

**XXII.**

The letter of November 11, 2002 is intended to cause false and unfounded fears of direct or indirect **financial** harm to members of the Plaintiff class resulting from the prosecution of the lawsuit against Tchefuncta Club Estates, Inc.

**XXIII.**

The Plaintiff class contains many **elderly** people who are particularly vulnerable to the willful and intentional acts of Defendants in seeking to incite fear of **financial** harm.

**XXIV.**

Defendants had prior knowledge of the susceptibility of members of the Plaintiff class to the tactics complained of herein which knowledge was gained, in part, through the participation by their attorney on both sides of this controversy.

**XXV.**

The actions of Defendants in willfully creating fear, mental anguish, and emotional upset in the Plaintiff class by use of unscrupulous methods constitutes the tort of Intentional Infliction of Emotional Distress.

**XXVI.**

Pursuant to [articles 861 and 893 of the Louisiana Code of Civil Procedure](#) Petitioners damages are set forth as follows:

**1. General Damages**

Petitioner, individually and on behalf of the Plaintiff class, demands all general damages permitted by law in a reasonable amount to be determined by the trier of fact, the said damages to include damages for fear, mental anguish, emotional upset, and loss of enjoyment of life.

**XXVII.**

Petitioner, on behalf of the Plaintiff class, wishes to reserve the right to seek additional damages, including damages for diminution of property values, should the continuing conduct of Defendants make same necessary.

**XXVIII.**

Upon information and belief, no member of the Plaintiff class has damages exceeding the jurisdictional limit required for obtaining a trial by jury.

Wherefore Petitioner prays:

1. That the Defendants be served with copies of this petition and cited to appear and answer same.
2. That in due course a hearing be held to consider the certification of this matter as a class action and that this matter be so certified.
3. That after all due proceedings are had there be judgment rendered herein in favor of Petitioner, individually and on behalf of all members of the Plaintiff class, for all damages permitted by law under the torts of abuse of rights and intentional infliction of emotional distress with the said damages to be awarded against the Defendants jointly, severally, and in solido.
4. for all costs of this proceeding including all expert witness fees and all costs of depositions used at trial.
5. For all appropriate legal and equitable relief.

Respectfully submitted,

<<signature>>

EDWARD J. CLOOS, III

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